IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.254 OF 1993.

Executive Engineer,
Electricity Department : Appellants.

versus

Ramiben Ramubhai Pardhi & ors. : Respondents.

Mr.R.M.Agarwal with Mr.G.R.Agarwal for the appellants.
None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 10th January 2005.

ORAL ORDER

1. Heard advocate for the appellants. Nobody is present for the respondents. Respondent No.1 Ramiben is the widow of Ramubhai Pardhi who died on 23rd June 1991 at about 12 noon due to electric shock which he received when he contacted with live wire while picking up

Mangos from his couryard. The respondent No.1 and other legal heirs have filed the suit for recovery of Rs.Two lacs by way of compensation against the present appellants. Deceased Ramubhai was in government service and was earning Rs.1295/- per month and, according to the respondents, he was 22 years of age at the time of accident. But according to the appellants, he was 24 years of age.

2. The appellants denied their liability in its entirity. However, the trial Court after scrutinizing and considering the entire evidence and giving sound reasoning held against the appellants and awarded compensation out of tortious liability to the tune of Rs.Two lacs and it is this order which is challenged by the appellants in this appeal.

3. Counsel for the appellants made two submissions that Respondents had failed to prove that there was any negligence on the part of the appellants in this case and, secondly, he contended that multiplier of 30 applied by the trial Court and grant of interest are totally wrong. He contended that even if the deceased

Ramubhai was 24 years of age and was in government service, multiplier of 18 should have been applied. He relied upon the judgment of this Court reported in **2004 (2) All MR 803 (Smt.Mandabai wd/o Prabhakar Pudake vs. Daljitrai s/o Dinananth Chhabra & ors.]** in this regard. So far as interest part is concerned, he contended that the trial Court has awarded interest at the rate of 15% per annum. It was definitely on higher side and looking to the two judgments of this Court reported in **2004(2) All MR 798 [Abdul Samee s/o. Abdul Raheman vs. Mohd. Ishaq s/o. Haji Ismail]; and 2004 (2) All MR 51 [Sharad s/o. Marotrao Kolhe vs. Baldeo Raj s/o Mulkhraj Chhabra & Anr.]** the rate of interest at 9% per annum would be proper.

4. So far as first part of the contentions of Mr.Agarwal that Respondents had failed to prove the negligence on the part of the appellants is concerned, I do not find any force and substance. Mr.Agarwal took me through the entire evidence, findings and observations of the trial Court and; the Rules and the Electricity Act, 1910 read with Electric Supply Act, 1948, particularly Rule Nos. 29(1) and 50(1)(f) and,

the oral evidence adduced by the parties. I find that the trial Court has given strong and convinicing reasonings to come to the conclusion of the negligence of the appellants in this matter. I do not find any fault in the reasonings and the conclusion of the trial Court. Therefore, those findings are required to be accepted.

5. However, so far as applicability of multiplier, I find that the reasonings of the trial Court are wrong. The trial Court relied upon the judgment of Punjab & Hariyana High Court reported in **1991 ACJ 876 [Akheysingh & ors. v. William Jerry & ors.]** where the deceased was 45 years of age and multiplier of 12 was applied. It apears that the trial Court by stretching the same logic held that if multiplier of 12 years is applicable for a man who died at the age of 45, then multiplier of 30 for a man who died at the age of 22 years applies. This logic and reasoning of the trial Court are wrong.

6. Apart from that in the judgment of this Court reported in **2004 (2) All MR 803 (Smt.Mandabai wd/o Prabhakar Pudake vs.**

Daljitrai s/o Dinananth Chhabra & ors.] the deceased was 25 years of age but the multiplier of 18 years was applied. Since this is a judgment of our High Court and the circumstances that is the age of deceased are almost identical i.e. 24 or 25 years, multiplier of 18 years would apply in the instant case and not 30.

7. However, that will not factually help the appellants because the trial Court in para 43 has observed that by applying multiplier of 30 years amount of compensation comes of Rs.2,88,000/- as loss of dependency, Rs.10,000/- for mental shock and suffering and Rs.15,000/- as loss of consortium to the respondent No.1. The trial Court, therefore, found that the respondents were entitled for Rs.3,13,000/- but since the respondents had claimed only Rs.2,00,000/- the compensation was restricted to Rs.2,00,000/-.

8. The effect of applying multiplier of 18 is that the amount of compensation that the respondents to be entitled to Rs.1,72,800/-. But the claim of the respondents for Rs.10,000/- for mental shock and suffering and Rs.15,000/- as loss of consortium to the respondent No.1 will

have to be taken into consideration and allowed. The trial Court has held that they were entitled to claim that amount but the claim was not granted because the respondents had claimed only Rs.2,00,000/-. Now since the matter is under appeal, that claim can be considered and once the liability of the appellants is found to have been validly held, then they are naturally required to pay Rs.10,000/- for mental shock and suffering and Rs.15,000/- as loss of consortium to the respondent No.1. Therefore, the amount to which the respondents are entitled will be as under :-

	Rs.1,72,800/-	as the amount of compensation due to loss of dependency;
	Rs.10,000/-	for mental shock and suffering;
	Rs.15,000/-	as loss of consortium to the respondent No.1.
	==========	
Total	Rs.1,97,800/-	
	==========	

9. Mr.Agarwal, in addition and as stated by me earlier, also challenged the order of the trial Court regarding grant of interest at the rate of 15% per annum from the date of the suit till the date of payment. In this regard he drew my attention to the judgment, as reffered to by me earlier. In both the judgments the rate of interest was granted at Rs.9% per annum after taking into consideration the policy of Reserve Bank of India of lowering interest rate on all counts. Therefore, according to Mr.Agarwal the respondents are entitled to the interest at the rate of 9% per annum only. It was pointed out by him to me that the impugned judgment is delivered in 1993 and the change in the policy of Reserve Bank of India about lowering the interest rate took place some time in 2000 and, therefore, the interest rate has to be fixed after considering both these aspects viz. pendency of the matter from 1991 and finality of the matter in 2005. Therefore, considering the aforesaid facts I pass the following order :-

:ORDER:

The appeal is partly allowed.

The plaintiffs/respondents are entitled to recover Rs.1,97,800/- by way of compensation with interest at the rate of 10% from the date of suit till realization.

Rest of the order to remain as it is.

No order as to costs.

[D.G.DESHPANDE]

10/01/2005 JUDGE.